

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

CRIMINAL NO. 15-20804

vs.

HON. BERNARD A. FRIEDMAN

D-1 JOHN HAMILTON,

Defendant.

**SENTENCING MEMORANDUM OF THE UNITED STATES
AS TO DEFENDANT JOHN HAMILTON**

The United States of America submits the following memorandum concerning the sentencing of defendant John Hamilton.

I. INTRODUCTION

John Hamilton betrayed the trust of the 18,000 members of Operating Engineers Local 324 who elected him to be the boss of the union. Instead of humbly recognizing the fiduciary trust with which he had been granted, Hamilton viewed his position as a way to enrich himself through extortion. Hamilton deliberately and willfully used his power to threaten, intimidate, and coerce union business agents and employees into giving him hundreds of thousands of dollars. Hamilton's crimes had real effects on real people, who suffered for years under his dictatorial rule. He

fired subordinates and took away their livelihoods for the sole reason that his employees stood in the way of his efforts to enrich himself at the expense of Local 324's elected officers and employees. The Court's sentence should impose a just punishment upon Hamilton for his serious crimes. Given Hamilton's leadership of the extortion conspiracy and his breach of trust, a sentence at the top of the guideline range is fair and appropriate.

Instead of working every day to better the interests, conditions, and welfare of his 18,000 members, Hamilton worked every day to take advantage of his position as boss for his own interests. This Court needs to punish Hamilton's misconduct and to deter other union officials from using fear and their power to similarly enrich themselves at their members' expense.

II. ARGUMENT

A. The Nature and Circumstances of Hamilton's Crimes (18 U.S.C. § 3553(a)(1))

1. Hamilton's Position as Business Manager and His Slate Fund

From 2003 through September 2012, John Hamilton served as the elected Business Manager of Operating Engineers Local 324, the highest official of the union. PSR ¶ 10. As the Business Manager, Hamilton exercised supreme authority over the actions of the union and its officers and business agents, with the power to terminate any of the union's business agents and employees at will and for any

reason. By all accounts, Hamilton was an old school union boss who aggressively used his power as the leader of the union to dictate the operations of the union. From that position of trust and authority, Hamilton engineered and led a criminal extortion conspiracy to coerce and intimidate union business agents into each giving him over \$5,000 per year into a fund called the “Team Hamilton Slate Fund.” Ostensibly, the fund was to be used to pay for union re-election efforts for Hamilton and his slate of candidates. In practice, however, the slate fund was a slush fund, where Hamilton used portions of the money for his own personal expenses. PSR ¶ 10. In addition, when he lost re-election, Hamilton emptied the remaining \$145,000 in the slate fund for his own benefit and for the benefit of his two co-conspirators and co-defendants, David Hart, Hamilton’s Chief of Staff, and Steven Minella, the elected President of Local 324. PSR ¶ 18.

2. Hamilton’s Use of Fear to Coerce Slate Fund Payments

Hamilton used the threat of firing as a way to ensure compliance with his dictates and demands. PSR ¶ 13. The 30 to 35 business agents employed by Local 324 to run the day-to-day operations of the union were all forced to pay \$100 every week into the fund, for a total of \$5,200 per year. PSR ¶¶ 10-11. The business agents knew that if they refused to pay into the fund, Hamilton would immediately terminate them, and they and their families would be left without a job or income. PSR ¶ 13. This fear of economic harm drove the extortion conspiracy, and generated

hundreds of thousands of dollars in forced payments from 2009 through August 2012, when Hamilton finally lost re-election. Once Hamilton was forced out, and he lost the power to terminate business agents, the payments into the Hamilton Slate Fund dried up.

3. Hamilton Fires Dombrow and Retaliates Against Him

Although the union's business agents firmly believed that Hamilton would fire them if they refused to pay into the slate fund, Hamilton's termination of business agent Ken Dombrow made it unmistakable that Hamilton would not tolerate any refusal to pay into the fund or even any complaint about the payments. In September 2010, Dombrow was serving as the elected auditor of Local 324, and he was employed as a business agent. When Hamilton received word that Dombrow had complained to some secretaries about making the slate fund payments, Hamilton directed union President Steve Minella to immediately summon Dombrow and fire him from his job. PSR ¶ 13. When Dombrow appeared at Hamilton's office after being pulled from a funeral that Dombrow was attending that day, Hamilton fired him immediately because of Dombrow's slate fund complaint. *Id.* A couple days after Hamilton's firing of Dombrow, Hamilton made sure the message of the firing got through to the other business agents of Local 324. At a meeting of the union's business agents, Hamilton stated: "If anyone's got a problem with the slate, contributing to the slate, I want to hear about that too. . . . You know if you don't

want to pay the slate, you don't have to. It's as simple as that, you can go find a f***** job somewhere too." PSR ¶ 14. Hamilton's statement was recorded by an individual at the meeting because it was anticipated that Hamilton would say something about Dombrow's recent firing, and a whistleblower had had enough of Hamilton's coercion and threats. The business agents at the meeting took Hamilton's statement as a clear threat and a direct reference to Dombrow's termination, and they continued to pay into the fund without question after seeing what had happened to Dombrow. PSR ¶ 15. The business agents also recognized the threat because Hamilton had made similar threats on prior occasions. *Id.*

After Hamilton fired Dombrow as a union business agent, Dombrow sought employment as a regular union member working for a Local 324 contractor. PSR ¶ 16. In the summer of 2012, when Hamilton heard that Dombrow had employment as an operating engineer, Hamilton directed union President Minella and another business agent to intervene with the contractor and use whatever union rule or regulation possible to get Dombrow removed as an employee. *Id.* Hamilton sought to blackball Dombrow from any union employment because of Dombrow's complaints about the slate fund. *Id.* Dombrow's employer refused to get rid of him despite the actions of Minella and the business agent, who were following Hamilton's instructions. Hamilton's continued effort to retaliate against Dombrow had an effect on other business agents. They recognized that Hamilton would use

all of his power to terminate and blackball anyone who opposed him. This was another example of Hamilton's use of the fear of economic harm to perpetuate his extortion scheme.

4. Hamilton Fires Union President Scott Page

Another way that Hamilton exerted fear and intimidation to force the union's business agents to pay into his slate fund was through the termination of Scott Page, the elected President of Local 324, who served before Minella. PSR ¶ 17. In the fall of 2009, Hamilton wanted to give himself a significant increase in salary. At the time, such a salary increase had to be approved by a vote of the union's membership. Hamilton engineered a change to this requirement by altering the union's by-laws so that Local 324's executive board could approve a salary increase for Hamilton. Immediately after this change went into effect, Hamilton then indicated that he was going to take a salary increase of approximately \$90,000 per year, for a total salary of about \$250,000. Scott Page, the then elected President of the union, suggested to Hamilton's Chief of Staff, co-defendant David Hart, that it was not a good time for Hamilton to take a salary increase. *Id.* This was because Page felt that the state of the economy in 2009 and the financial difficulties of union members would not make a salary increase look good, and the union's funds were low. In addition, Page had just pushed through the change in the union's by-laws sought by Hamilton by assuring the union membership that the change was not a "money grab" whereby

Hamilton would use the changed by-law to get a big salary increase. When Hamilton heard about Page's objections to his salary increase, Hamilton became enraged, and he immediately fired Page as a business agent. PSR ¶ 17. Since Page was the elected President of the union (for which Page earned no salary), Hamilton had no power to fire Page as President. Hamilton's firing of Page was a shocking event for the union and its business agents. Eventually, Page agreed to step down as President, if Hamilton would give Page his job back as a business agent. However, Hamilton had sent a clear message that any opposition to his dictates would be met with termination. Hamilton went on to give himself a raise to \$250,000, using the termination of Page and backdated executive board minutes to force through the increase. After what Hamilton did to Page, business agents were even more convinced that Hamilton would immediately fire them if they raised any objection to the weekly payments into the slate fund. *Id.*

5. Hamilton's Personal Use of Slate Fund Money

Hamilton used the money that he coerced from his union subordinates to maintain his position as Business Manager by bankrolling his re-election campaigns. More troubling, however, was Hamilton's use of the slate fund money for his own personal enrichment. PSR ¶ 19. As part of his plea agreement, Hamilton has agreed to \$250,000 in restitution for his extortion conspiracy. PSR ¶¶ 20, 63. Hamilton's personal use of the slate fund money took many forms. The best example is the

\$71,000 that Hamilton simply took from the slate fund account soon after losing the election as Business Manager in August 2012. PSR ¶ 18. Hamilton took this money as his own and spent it on personal expenses. Hamilton also took and spent money from the slate fund while he served as union boss. In this regard, Hamilton used money from the slate fund to pay for expensive meals and liquor, as well as sports tickets around town. PSR ¶ 19. He used it for expenses at the Detroit Athletic Club. *Id.* He directed that \$5,000 be given as a wedding present to his own daughter. *Id.* Over the course of two years, he took \$10,000 from the slate fund, deposited it into his personal account, used the money as a personal charitable deduction, and then used the charitable donations to reduce his own personal tax liability. *Id.*

Hamilton's use of slate fund money to pay for his own meals and liquor was an extension of Hamilton's use of tens of thousands of dollars in union funds to pay for meals and liquor on a weekly basis at high-end restaurants in southeast Michigan. This misuse of union funds was known as the "Lunch Program," and Hamilton regularly used union funds to live a high-end lifestyle. Union business agents reported that these meals were an abuse by Hamilton of his position, and that there was no union business justification for these expenditures of union funds.

6. Hamilton Conceals His Extortion Through Structuring

As part of his criminal scheme to personally enrich himself, Hamilton sought to conceal his crime by structuring checks and withdrawals in order to avoid generating a Currency Transaction Report. PSR ¶ 18. After he lost the election in August 2012, Hamilton directed his two henchmen and co-defendants, Minella and Hart, to write a series of seventeen checks in amounts less than \$10,000 in order to empty out the Hamilton Slate Fund bank account of the \$145,000 remaining. *Id.* This conduct further demonstrates Hamilton's awareness of the criminal nature of his conduct and his willingness to work to conceal his crimes. Hamilton took the first check for \$9,500 and cashed the check at a bank, along with two other slate fund checks for \$200 each, thereby taking \$9,900 in cash for himself. By cashing slate fund checks for \$9,900, just under the \$10,000 threshold, Hamilton avoided the creation of a Currency Transaction Report. Hamilton sought to avoid, as he put it to Hart, raising any "red flags" at the bank. *Id.* In this way, Hamilton sought to avoid law enforcement scrutiny of his criminal scheme.

Over the course of the conspiracy from 2009 through August 2012, Hamilton extorted union business agents to pay hundreds of thousands of dollars into Hamilton's slate fund. Each year, 30-35 business agents each paid \$5,200 into the fund. PSR ¶ 11. That amounts to approximately \$150,000 per year, each year from 2009 through 2012, for a total of over \$500,000 in forced payments to Hamilton by

the union's business agents. Of this \$500,000, some was actually spent on election expenses and expenses related to employee morale. Hundreds of thousands of dollars, however, were used or retained by Hamilton for his own personal expenses or the personal use of his two co-conspirators.

B. The Seriousness of Hamilton's Crimes, Just Punishment, and Respect for the Law (18 U.S.C. § 3553(a)(2)(A))

A substantial prison sentence is necessary to reflect the seriousness of Hamilton's crimes, to provide just punishment for those crimes, and to promote respect for the law. While the boss of Local 324, Hamilton dominated the union and used intimidation to personally enrich himself.

The seriousness of Hamilton's crimes is epitomized by his abuse of a position of trust as Business Manager and his leadership of the extortion conspiracy. Hamilton was the elected leader of Local 324, entrusted to oversee the operations of the union for the best interests of the union's members. Hamilton abused that position of trust to carry out his extortion scheme, using his ability to terminate business agents at will to coerce them into paying him money under the threat of firing. Hamilton needs to be punished for the fear and financial loss he imposed on the union's business agents for years and the significant harm he did to Ken Dombrow and his family.

Hamilton also was the unquestioned leader and designer of the criminal scheme. Hamilton directed and supervised the actions of his co-conspirators Minella and Hart. For example, Hamilton directed Minella to assist in firing Dombrow. Later, Hamilton directed Minella to use union work rules in an attempt to get Dombrow fired from a job as an operating engineer at a pipeline contractor. At the conclusion of the conspiracy, Hamilton directed Hart and Minella to write the series of seventeen checks that were used to empty out the bank account and to distribute the proceeds of the criminal conspiracy to its members.

The fact that Hamilton abused a position of trust and was the leader of the criminal conspiracy should guide this Court in deciding where to sentence Hamilton within the sentencing guideline range and whether to grant the defense's request for a downward variance. Hamilton's leadership and abuse of trust strongly support a sentence at the top of the guideline range in order to punish him and to demonstrate the seriousness of his offense.

**C. Detering the Criminal Conduct of Others
(18 U.S.C. § 3553(a)(2)(B))**

Imposing a serious prison sentence on Hamilton serves the important purpose of deterring other union officials in our community and around the country from engaging in similar misconduct. *See* 18 U.S.C. § 3553(a)(2)(B). General deterrence has its greatest impact in white-collar cases, like this one, because these crimes are

committed in a more rational and calculated manner than sudden crimes of passion or opportunity. *United States v. Peppel*, 707 F.3d 627, 637 (6th Cir. 2013) (quoting *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006)).

High-level union officials are aware of Hamilton's conviction and the nature of his criminal scheme. The practice of using election and other funds like the Hamilton Slate Fund, sometimes referred to as "flower" funds, is ubiquitous among union officials. These funds are supposed to be used for union elections or, for the flower funds, some benevolent purpose like flowers at the funerals of union members or their families, or for retiree gifts. However, the abuse of these funds is widespread. The abuse takes the exact form used by Hamilton in his scheme. Union bosses like Hamilton coerce their subordinates into paying into the funds for fear of losing their jobs. Hamilton's conviction and the sentence this Court imposes on him can be used by the Department of Labor to deter similar such wrongdoing by other union officials around the country. If the Court were not to impose a significant sentence on Hamilton, then there would be a clear message sent that similar misuse of these election and flowers funds will not be taken seriously. Thus, this Court's sentence for Hamilton will have real consequences in policing and deterring improper union governance.

**D. Protecting the Public from Further Crimes by Hamilton
(18 U.S.C. § 3553(a)(2)(C))**

Hamilton pleaded guilty to the most serious and significant crime alleged against him. He took responsibility for this crime and is willingly before the Court to accept its punishment. Since losing the election in 2012, Hamilton has not sought to retake union office or to otherwise insert himself into union affairs. In addition, Hamilton reports that he is sober and treating his alcoholism, which contributed to his crimes. Under these circumstances, and given his criminal conviction for extortion, it is unlikely that Hamilton will be put in a position again to commit additional crimes in the future.

**E. Avoiding Sentencing Disparities Among Similarly
Situated Defendants (18 U.S.C. § 3553(a)(6))**

Hamilton's tactics of coercion and intimidation had a significant impact on the elected officers, employees, and members of Local 324. Hamilton's guideline range reflects the serious and wrongful nature of his criminal scheme. His sentence also should reflect these facts. Section 3553(a)(6) instructs courts to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." That subsection "is concerned with national disparities among the many defendants with similar criminal backgrounds convicted of similar criminal conduct." *United States v.*

Benson, 591 F.3d 491, 505 (6th Cir. 2010). A court’s careful review of the guideline range “necessarily [gives] significant weight and consideration to the need to avoid unwarranted disparities.” *Gall v. United States*, 552 U.S. 38, 54 (2007). In fact, one of the “central reasons” for adopting the sentencing guidelines in the first place “was to ensure stiffer penalties for white-collar crimes and to eliminate disparities between white-collar sentences and sentences for other crimes.” *United States v. Peppel*, 707 F.3d 627, 638-39 (6th Cir. 2013).

Although extortion by union bosses is widespread, convictions for Hamilton’s particular brand of extortion through the use of coerced payments into an election fund are not. As a result, there are not other examples of sentences around the country with which to compare or to avoid disparities. However, this Court has the opportunity to set the bar for future cases involving similar schemes. Thus, it is important for the Court to impose a significant sentence on Hamilton, not only to deter other wrongdoing, but also to set a baseline for similarly situated defendants.

III. CONCLUSION

John Hamilton used his position as the boss of Local 324 to satisfy his own greed. Instead of putting the interests of union members and union retirees first, Hamilton put his own interests first using threats, coercion, and intimidation. Given Hamilton’s instigation and leadership of the extortion conspiracy over many years,

as well as his abuse of the trust placed in him by the union's membership, Hamilton should be sentenced to 30 months of imprisonment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2018, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

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